

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT SMITH, Jr.,) CASE NO. C05-0278-JLR
Petitioner,)
v.)
JAMES SPALDING,) ORDER DISMISSING § 2254
Respondent.) PETITION WITHOUT PREJUDICE
) AND DENYING EXTENSION
) OF TIME

The court, having reviewed petitioner's § 2254 petition, the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, any objections thereto, and the balance of the record, does hereby find and

- (1) The court adopts the Report and Recommendation.
- (2) Petitioner's § 2254 petition is DISMISSED without prejudice because the court is without jurisdiction to consider it until the Ninth Circuit Court of Appeals has authorized its filing.
- (3) Petitioner's application for leave to proceed *in forma pauperis* (Dkt. # 1) and Petitioner's motion for an extension of time (Dkt. # 7) are DENIED as moot.

ORDER - 1

01 (4) The Clerk is directed to send a copy of this order to Petitioner and to
02 Judge Theiler.

03 DATED this 15th day of April, 2005.
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06 JAMES L. ROBART
07 United States District Judge
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